

CAPITAL PROJECTS ADVISORY REVIEW BOARD
1115 Washington Street Southeast
Office Building Two
Conference Rooms SL-03
Olympia, Washington
May 13, 2010 9:00 AM

Draft Minutes

MEMBERS PRESENT

Daniel Absher
Vince Campanella
Norman Strong
Damon Smith
Ed Kommers (Vice Chair)
John Ahlers
Olivia Yang
John Lynch
Larry Byers
Robert Maruska (Chair)
Cynthia Cooper
Rodney Eng
Christopher Hirst
David D. Johnson
Mark Riker
Gary Rowe
Christine McCorkle

REPRESENTING

General Contractors
General Contractors
Architects
Engineers
Specialty Contractors
Private Industry
Higher Education
General Administration (GA)
Insurance/Surety Industry
Ports
OMWBE
Cities
Private Industry
Construction Trades Labor
Construction Trades Labor
Counties
Specialty Contractors

MEMBERS ABSENT

Rep. Bruce Dammeier	House (R)
Senator Rodney Tom	Senate (D)
Senator Dale Brandland	Senate (R)
Vacant	Public Hospital Districts
Dan Vaught	School Districts
Rep. Kathy Haigh	House (D)

STAFF & GUESTS

Nancy Deakins, GA
Danelle Bassett, GA
Valerie Gow, Puget Sound Meeting Services
Patrick Allen, Pacific Mobile
Dick Lutz, Centennial Construction
Fay Benson, GA
Jim Borrow, KCDA
Marsha Reilly, Legislature
Linneth Riley-Hall, Sound Transit
Ashley Probart, Association of WA Cities

Van Collins, AGC
Krista Britton, Abbott Construction
Penny Koal, SPSCC/GA
Jeanne Rynne, OFM
Larry Stevens, MCAWW/NECA
Lisa Taylor, King County
Josh Swanson, Rebound
Mike Purdy, Citizen
Stan Bowman, AIA/WA
Linda A. Sullivan-Colglazier, OAG

Welcome & Introductions

Chair Robert Maruska called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:04 a.m. Everyone present provided self-introductions. A meeting quorum was attained.

Chair Maruska welcomed Christine McCorkle representing Specialty Contractors replacing Rocky Sharp.

Approve Agenda

The agenda was corrected to reflect Christine McCorkle as the representative for Specialty Contractors.

Ed Kommers moved, seconded by Dave Johnson, to approve the agenda as amended. Motion carried.

Approve February 11, 2010 Meeting Minutes

A correction was requested to change the second sentence in the second to last paragraph on page 8 stating “The Board is indicating that it doesn’t believe the project doesn’t meet the intent of the statute.” to state, “The Board is indicating that it doesn’t believe the projects meets the intent of the statute.”

Dave Johnson moved, seconded by Daniel Absher, to approve the February 11, 2010, meeting minutes as amended. Motion carried.

Public Comments

There were no public comments.

AAG Brief on Serving the Public Interest

Linda Sullivan-Colglazier, Assistant Attorney General (AAG), reported at the last meeting, an issue involving the City of Tacoma’s project raised a question on how the Board could revoke certification. The statute specifically states that, “The committee may revoke any public body’s certification upon a finding, after a public hearing, that its use of design-build or general contractor/construction manager contracting procedures no longer serves the public interest.” Ms. Sullivan-Colglazier said she hasn’t finalized a briefing memo in response to the Board. She shared the direction of the advice and asked for feedback.

In reviewing the statute and case law on public interest on public works contracts it appears clear from the intent that the Legislature wants alternative public works to meet public interest criteria and the objectives of competitive bidding. The intent statute indicates that, “The legislature finds that the traditional process of awarding public works contracts in lump sum to the lowest responsible bidder is a fair and objective method of selecting a contractor. However, under certain circumstances, alternative public works contracting procedures may best serve the public interest if such procedures are implemented in an open and fair process based on objective and equitable criteria.” Ms. Sullivan-Colglazier said she identified three criteria the Board could use for revocation.

The first one is whether the Board finds the public body no longer meets the criteria for certification, such as qualifications and experience. For example, if a circumstance involved a firm going bankrupt and the name carries over but none of the experience and the Board found that the new entity no longer met the qualifications and experience that would be grounds for decertification. Another criterion is satisfying audit findings to the community’s satisfaction. It’s unknown however, whether new audit findings on a new or current public works project would be a basis for decertification. That would likely apply as criteria for not certifying if additional new audit findings were not resolved. She advised that she’s unsure if the Board would want to have decertification ability on new audit findings.

Secondly, if the Project Review Committee (PRC) finds that the public body is not implementing the alternative public works contracting procedures in an open and fair process based on objective and equitable criteria there would need to be a finding based on supportable evidence. If they didn’t meet the essential component of the intent then that would be grounds for revoking certification.

The third is based more on traditional competitive bidding and there is case law. The intent of competitive bidding is to basically protect the public or to protect against fraud or corruption. A clear case could include the committee finding that the public body is not implementing the alternative public works contracting procedures to meet the public interest criteria for traditional competitive bidding. The competitive bidding laws are enacted to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable, and they are enacted for the benefit of property holders and taxpayers, and not for the benefit or enrichment of bidders, and should be so construed and administered as to accomplish such purpose fairly and reasonably with sole reference to the public interest.

Ms. Sullivan-Colglazier said those are the criteria for possible reasons for revocation.

Ed Kommers commented that the revocation occurs at the committee level and not by the Board. In the case of a public body denied approval of a project by the committee, the applicant can appeal to the Board, but a decertification of a public owner occurs at the committee level without any interaction from the Board. Ms. Sullivan-Colglazier affirmed the statute specifies the action will occur by the committee and not the Board.

Rodney Eng asked if the committee reviews a certified public body and all General Contractor/Construction Manager (GC/CM) projects completed under the certification, would there be sufficient grounds to decertify the public body if the PRC believed it would not have approved the projects for the GC/CM delivery method. Ms. Sullivan-Colglazier said she doesn't believe it would be grounds under not having the qualifications or experience to make the determination, but if the PRC found that it rose to the level of others in that they are not implementing them in an open and fair process that might be grounds. If the PRC disagreed with the owners decision she's unsure if that would be sufficient but it might be sufficient for nonrenewal. Mr. Eng said when the Board discussed certification it was about the ability to make the right choice rather than the ability to implement.

Phil Lovell, PRC Chair, said he's unsure if the committee has encountered a situation where a project came before the PRC either from an uncertified or certified public agency where the committee has recommended against using alternative public works but that they should bid the project traditional Design-Bid-Build (DBB) and the agency disagreed and wanted to appeal. The committee has found that in evaluating whether to certify a public agency, one of the primary criterion of consideration is whether the agency has the infrastructure, staffing, and experience to carry out the full intent of the RCW relative to alternative public works rather than the agency putting together a specific team of consultants on behalf of a particular project and presenting the project to the PRC for approval. The committee, during the certification process, collectively determines whether the public agency has the necessary experience, infrastructure, and staffing to complete the projects without further review. However, that doesn't address the issue of whether agencies are abusing that.

Mr. Kommers commented that the Board did receive an appeal from a public agency that was denied approval by the committee. Nancy Deakins noted the appeal was for certification for Design-Build. The Board overturned the committee's decision. There have been cases where the committee did not approve a project based on components of the project not meeting the qualification of GC/CM and the public body resubmitted the project proposal after satisfying the requirements.

John Lynch commented that those instances where an entity is approved as a certified owner and they begin pursuing GC/CM projects and the Board learns that some of the projects are not appropriate for GC/CM, it's likely sufficient time has elapsed that the entity is near recertification. It would be fairly subjective to learn about a project after the fact and conclude that the entity was not making a right choice.

Ms. Sullivan-Colglazier said the revocation process would be an extreme remedy, such as to address something severe as opposed to an incident during the recertification process. The Board would want to have some ability to immediately withdraw certification and it would need to be under an extreme circumstance.

Mr. Lynch commented that it might be sufficient for the Board to send a letter to the agency urging a change in its approach.

Dave Johnson pointed out that since the opinion is a draft and the committee is the only body that can revoke, the issue is whether both the committee and the Board should be involved. Something would have to come forward from a project in terms of it not being in the public interest. It would likely entail a project where something went wrong and based on the criteria someone brought it forward. He suggested the Board should be included in the decision-making process for revocation. It would also provide an opportunity for a broader discussion by the Board.

Daniel Absher asked about the identity of someone requesting revocation. Ms. Sullivan-Colglazier said at this point the statute doesn't address that issue. It appears the statute allows the committee to initiate action or it could be addressed to the committee by other means.

Mr. Absher said any revocation should come to the Board rather than the PRC. The Board should clarify the rationale and the process for revocation so that it's clear. It likely will be a rare event, but for it to be meaningful, the Board should clarify the language in the statute.

Vince Campanella asked whether any certified agencies have applied for recertification. Mr. Lovell said the first recertification will begin in July. Mr. Campanella asked if the PRC has an established process to review previous projects performed by the agency under alternative methods. Mr. Lovell replied that it should be part of the criteria for review. Mr. Eng said recertification is essentially automatic for the next three years unless there is significant objection. Mr. Campanella suggested the PRC should establish procedures so that all members are aware of them if there is a situation that needs to be addressed.

Chair Maruska noted that the Board approved the PRC's procedures and based on his recollection there is no section on decertification.

Mr. Johnson commented on the importance of addressing the issue especially as the PRC approaches a cycle for recertification.

Ms. Deakins reviewed recertification language within the statute stating, "The committee may renew the certification of a public body for one additional three-year period. The public body must submit an application for recertification at least three months before the initial certification expires. The application shall include updated information on the public body's capital plan for the next three years, its intended use of the procedures, and any other information requested by the committee. The committee must review the application for recertification at a meeting held before expiration of the applicant's initial certification period. A public body must reapply for certification under the process described in subsection (1) of this section once the period of recertification expires."

Mr. Johnson questioned whether the committee could require an overview of completed projects and outcomes as an element that addresses the intent of the statute. That process could be a useful tool.

Mr. Eng said the recertification was not intended to be a full process, but rather a streamlined process compared to the original certification.

Mr. Lovell referred to the prior appeal to the Board and asked if it pertained to certification to use DB or for a specific project. Ms. Deakins said it pertained to certification. Mr. Lovell said his previous reference pertained to a specific project. There hasn't been a situation where a public body appealed a denial by the PRC.

Ms. Deakins said one public agency has asked about a different application for recertification and whether different information is required. The current recertification application doesn't address that question. Mr. Lovell said part of the discussion involves data collection for both subjective and objective findings on projects completed under alternative works. The issue is whether that information is available for anybody to review. Mr. Deakins said in section 7 of the statute it states, "Certified public bodies must submit project data information as required in RCW 39.10.320 and 39.10.350." That could be an element for the committee to evaluate. Staff can pull the data from the survey system for the committee's review.

Mr. Kommers referred to Ms. Sullivan-Colglazier's report and whether the Board believes there's any need to proceed with a procedure. He suggested not proceeding any further with the briefing.

Gary Rowe recommended the committee should have established procedures to be prepared in case a situation arises.

Ms. Sullivan-Colglazier advised that she has a draft memo that can be finalized or the Board could request a formal opinion in the event the Board was ever challenged.

Mr. Eng agreed some modifications should be pursued to the statute. Having an opinion of the current statute will be of limited value if the Board is going to amend the statute. He agreed no formal report from the AAG is necessary, but the committee should have procedures in place.

Ms. Yang agreed the briefing is sufficient. The Board should complete some more work to clarify the legislation and acknowledge that revoking certification is a drastic and dramatic action. The Board should define preliminary steps to avoid revocation, similar to steps taken before an employee is fired. Changes to the PRC's bylaws should be a combined effort between the Board and the PRC where the PRC receives the initial request for revocation with the request presented to the Board. Writing a letter outlining the steps would be powerful and likely viewed as a drastic measure by the Board to the public body.

Oliva Yang moved, seconded by Dave Johnson, to accept the briefing as sufficient, include the issue of how to revoke an owner on the list of legislative issues for 2011, and the discussion on revoking should be informed by development of a progressive system.

Mr. Absher said he's unclear about the third element of the motion. Mr. Eng agreed and indicated it's an idea surrounding how the Board approves revocation provisions. He said he's not ready for that level of direction and would rather have a task force discuss the issue and provide a recommendation.

Ms. Sullivan-Colglazier cautioned against considering a progression or steps of discipline as it's not authorized in the statute at this point. The Legislature included revocation as an extreme remedy to be swift so that if something went wrong with the process, the Board has a mechanism to correct it. She cautioned against having the ability to take corrective action in steps.

The makers of the motion offered a friendly amendment to remove the third point in the motion and include establishing a task force for considering the issue.

Mr. Lovell agreed the task force could create some language establishing criteria for decertification. Secondly, public agencies that are decertified can still apply for project approval to the PRC on a project-by-project basis. Finally, the PRC's charge is to ensure the project meets the criteria under the RCW for alternative public works and whether the public agency has the resources to complete the project under that method. It's important to have clear definitions.

The motion carried.

Report from Project Review Committee

Mr. Lovell reported the last meeting included two panels to consider two GC/CM projects involving additions and remodeling. Island Hospital in Skagit County is in the beginning stages of schematic design and was approved for GC/CM.

Mason General Hospital was the second applicant and the larger project. The hospital is in early stages of schematic design. The hospital received approval to proceed under GC/CM.

The next meeting is scheduled on May 27 of the full committee. Members will elect a new Vice Chair to replace Penny Koal who is assuming the Chair position effective July 1. One project application is for Design-Build (DB) from the University of Washington under the pilot project provision for a building at Harborview Medical Center comprised of an eight-story concrete frame building that will be demolished. Harborview Hall was built in 1931 and the project is challenging because there's much protection and utility work that could be affected. A panel is assigned to consider the application. The project is under \$10 million.

Mr. Eng referred to the Island Hospital project and asked how much the project cost was a factor in the panel's discussion as the cost was under \$10 million. Mr. Lovell said project cost was not an issue. The main issue involved ongoing operations and protection and safety of employees and patients to complete the project. The project involves a clinical building constructed adjacent to the hospital to accommodate hospital departments with a direct link to the hospital requiring reconfiguration of the Emergency Department. The project is complex and the panel believed it met the requirements.

Mr. Lynch suggested including on PRC's agenda a discussion to address recertification and the process for owner notification and supplemental information. Mr. Lovell acknowledged the suggestion. It's possible to prepare a draft procedure or a draft format for a letter to each certified agency advising them of the expiration and process for recertification. The goal is to use the form for each agency unless there are specific circumstances.

Members discussed the deadline in the statute stipulating that certified public agencies must submit an application for recertification a minimum of three months prior to the expiration. Mr. Lovell shared that the PRC has been notified by the University of Washington that it's applying for recertification.

John Ahlers moved, seconded by Rodney Eng, to accept PRC's report. Motion carried.

Board PRC Membership

Ms. Deakins reported a number of PRC member terms are expiring in July. The Board received information on each of the applicants. Members with terms expiring indicated they are willing to serve another three-year term. The Board wanted to open the process to consider new applicants. Some applicants represent the areas of architects, general contractors, subcontractors, and construction managers. There were no new applicants

representing public owners. Current members representing public owners can be considered for reappointment.

Robert Maruska moved, seconded by Vince Campanella, to reappoint Charles Davis, Linneth Riley-Hall, and Don Gillmore representing public entities to another three-year term on the Project Review Committee.

Ms. Deakins noted that Ms. Riley-Hall's term is not expiring but she no longer represents cities because she now works for Sound Transit. She wants to continue to serve on the PRC representing cities until a city representative can be found. The City of Seattle and Sound Transit support the reappointment.

Mr. Eng said it appears that cities may choose their representative. There is no requirement that the member must be a current city employee, as it could be a former city employee, such as Ms. Riley-Hall who understands the viewpoints of cities. The Board shouldn't intrude on the cities' selection of their representative on the PRC. Ms. Deakins said Board members representing cities are selected by the Association of Washington Cities. However, PRC members are appointed by the Board. The Board needs to confirm the appointment.

Rodney Eng moved, seconded by Dave Johnson, to amend the motion confirming Linneth Riley-Hall as the cities representative. Motion carried.

The main amended motion carried.

Ms. Deakins reported the next candidates for consideration represent the design industry. Current member Keith Schreiber has served a three-year term and is seeking reappointment. Three new applicants applying include Jeff Brown, BCRA; Bruce McKean, Helix Architecture; and Arthur Nordling, formerly with Integrus Architecture.

Norman Strong asked whether it is appropriate for all PRC members to ask for reappointment given the Board is always seeking new ideas. It appears a significant number of current members are seeking reappointment. He asked if there is a term limit for serving and whether the Board would like new perspectives represented on the PRC to keep the committee current with emerging trends. Chair Maruska replied that the Board encourages members to reapply if they are interested. Concurrently, it's important to address the issue of the best candidates and open the field to everyone interested in serving. The Board will consider all candidates and then select the appointment. It's intended to be an open selection that the Board looks at a number of candidates then renders a decision. There is no guarantee that a current member will be reappointed. Ms. Deakins added that there is no term limit for members.

Mr. Johnson said the intent is always to seek new members and new perspectives. There are several positions where there is only one candidate available to the Board to confirm. He agreed with Mr. Strong's observation that the PRC should not become stagnant and that the Board and the PRC should seek new members who are interested in alternative public works and the process. Mr. Lovell agreed and indicated that the PRC views its role as overseers of the system particularly in the design arena. If there are designers interested in participating they are encouraged to apply. Additionally, it would be beneficial if more designers attended GC/CM training.

Mr. Eng asked about any difficulty in convening PRC panels, especially those members from eastern Washington. Mr. Lovell reported there have been no problems. Typically, although the statute requires a six-member panel, the PRC assigns eight members to ensure the minimum number is present to convene a panel.

Chris Hirst commented that he doesn't know anything about the candidates other than what's been provided. He asked if anybody is available to speak on the candidates' behalf. John Ahlers said he also has the same reaction. He referred to Norman Strong for some guidance. Mr. Strong said of the four design industry architects he only knows Keith Schreiber, who is highly qualified.

Ms. Deakins shared that she knows all the candidates. Of the four, Mr. Brown and Mr. Nordling have the most experience in alternative public works. Both candidates as well as Mr. Schreiber are qualified. Mr. Absher shared that he knows all the candidates and all are qualified. It points to the dilemma of making a choice.

Ed Kommers moved, seconded by John Lynch, to reappoint Keith Schreiber to a three-year term.

Ms. Deakins noted that currently, there are no members from eastern Washington on the PRC. She reviewed current members of the PRC.

Motion carried.

Mr. Hirst recommended the Board should acknowledge the applicants and encourage them to continue applying. Ms. Deakins said she contacts each applicant electronically and advises them that their application will remain on file for future openings.

Ms. Deakins reviewed candidates for the three general contractor positions. Current members with expiring terms include Tom Peterson, Rodger Benson and Phil Lovell. New applicants include Curt Gimmestad, Absher Construction Company; Rich Philipovich, BNBuilders, Inc.; Mohammed Luqman, Lydig Construction; and Robert Askins, Graham Construction & Management, Inc.

Mr. Johnson moved to nominate Tom Peterson to another term. There was no second.

John Lynch moved, seconded by Dave Johnson, to reappoint Tom Peterson, Rodger Benson, and Phil Lovell to a three-year term.

Ms. Deakins noted that the Board has reappointed all current PRC members to another term. There have been no new candidates appointed.

Mr. Ahlers said his concern is satisfying the Board's objective of ensuring new people and new ideas are represented on the committee. He questioned whether the PRC should have term limits to assist the Board in appointing members.

Mr. Hirst asked whether there's information on the three existing members and whether they participate regularly. Mr. Lovell replied that all three are mainstays on the committee.

Damon Smith said he struggles with appointing new members just for the sake of introducing new members. If there are willing and able candidates who are doing a good job, they should be reappointed.

Several members discussed the difficulty of the process of appointing new candidates versus reappointments. Mr. Eng pointed out the importance of continuity and skill level. The Board acknowledged the decisions are difficult. Mr. Absher commented that part of the issue is that the terms are not staggered; it appears the Board must appoint the members to a three-year term. It was also noted that not all members will seek reappointment at some point.

Mr. Absher said he will abstain from voting. He agreed the current members are mainstays in the industry and in alternative procurement. No one should be offended if they are reappointed. However, there is also the issue of applicants taking the effort to submit applications and if the Board only considers reappointments. Mr. Campanella agreed term limits might benefit the process. The other issue of staggering is the ability to retain the experience level especially when there are multiple positions representing various industries.

The motion carried. Daniel Absher abstained.

Ms. Deakins reviewed applicants for construction manager. Paul Berry has served since 2007. Rusty Pritchard is a new candidate with Hill International from eastern Washington.

Mr. Campanella said he's worked with Mr. Pritchard for the last 12 years on several projects. Mr. Pritchard is very experienced. Mr. Hirst and Mr. Smith echoed similar comments.

Mr. Lovell said he's not familiar with Mr. Pritchard. However, Mr. Berry has been an active participant. This type of position is easier to rotate.

Damon Smith moved, seconded by Vince Campanella, to appoint Rusty Pritchard to the Construction Manager position. Motion carried.

Ms. Deakins reviewed candidates for Specialty Contractor. Mike Shinn is the current member and has served for three years. New candidates include Stacy Johnson, Auburn Mechanical; Jeff White, Holmberg Company; and Joseph Bettridge, Sunset Air Incorporated.

Mr. Kommers commented that all candidates are qualified and it's unfortunate that all of them couldn't be appointed.

Ed Kommers moved, seconded by Rodney Eng, to reappoint Mike Shinn to a three-year term. Motion carried.

The meeting was recessed from 10:37 a.m. to 10:55 a.m. for a break.

Chair Maruska reported on the legislative bill vetoed by the Governor requesting an additional CPRAB member representing transit agencies. The Public Hospital Districts position has been vacant for over 12 months and repeated discussions with the Association of Washington Public Hospitals Districts have been unsuccessful. The School Districts have indicated that it will not be able to participate because of resources. He asked the Board to consider ways to encourage more participation.

Ms. Yang inquired about the extent of the communication by the CPRAB with the school districts and public hospital districts. Chair Maruska said the Board requested reappointment of a member when the current member representing Public Hospital Districts was no longer an employee. That request was sent several times. He met with the President of the association and informed him of the situation and encouraged the association to nominate a member. There was a commitment to follow up at a subsequent meeting. However, there has been no response.

The school districts just recently notified the Board that it can no longer participate. There has been no subsequent follow up with any representatives from the school districts and previous attendance by the representative was inconsistent. The statute indicates that if a boardmember misses two consecutive meetings unexcused, the Board can request the Governor remove the member from the Board.

Ms. Deakins advised that the Board was notified that Mr. Vaught was no longer able to serve.

Mr. Eng said it's important for the Board to represent a balance of public and private interests. He suggested during the Board's work on 2011 legislation, the Board should change the public hospital and perhaps the school districts as the attendance has been nonexistent for some time to establish two at-large owner positions. That change would still satisfy the interests of the Board.

Jeanne Rynne, OFM, commented that she previously worked at the Puyallup School District and the Office of Superintendent for Public Instruction. There is interest from school districts to serve on the Board. The Board should pursue more efforts in recruiting a member.

Dick Lutz agreed that school districts need to be involved. Perhaps contacting the correct entity is the right approach.

Mr. Lovell said the PRC values having members represent the various constituencies because when panels are assembled for a project proposal from a hospital, it's important to have a member representing hospitals on the panel because of their ability to evaluate another agency. With some networking, it's possible to attract a new member. Mr. Lynch agreed that hospitals and schools are a big part of public construction and that with some networking efforts candidates could likely be identified.

Ms. Yang suggested an approach of sending a letter advising the hospital districts of the effort to identify a representative, and if the organization is unable to identify a candidate the Board will move forward in 2011 with legislation to reconfigure the Board positions. A similar letter could be sent to school districts requesting they send a representative by a specific date.

Penny Koal commented that Mason General Hospital representatives completed GC/CM training prior to presenting the project proposal to the PRC. There appears to be an interest in the process.

Ms. Riley-Hall asked about reviewing the statute to consider including some flexibility whereby agencies can designate representatives. There could be an opportunity for other agencies that want to be involved to fill the position with an at-large representative.

Rodney Eng moved, seconded by Oliva Yang, to direct the Chair, Vice Chair, and staff to send a formal letter to Public Hospital Districts and School Districts advising them that unless they intend to fill the positions, legislation might be proposed by the Board to eliminate the positions from the Board. Motion carried.

Task Force Status Reports

Integrated Project Delivery (IPD)/Best Value

Mr. Strong reported efforts are continuing on the Integrated Project Delivery method and by next month the National Association of State Facilities Administrators is releasing a report along with several other organizations on IPD for public and private owners.

Mr. Lynch briefed members on Best Value (BV) public works procurement. The task force was formed to review BV and has developed some specific recommendations. Currently, there are three alternative public works processes in statute of GC/CM, DB, and Job Order Contracting. BV could potentially become a fourth alternative process.

The Joint Legislative Audit and Review Committee (JLARC) developed some findings and recommendations in its study in 2005 identifying:

- Some agencies may be using GC/CM to overcome deficiencies in the Design-Bid-Build contracting method.
- The Legislature, through CPARB, should further analyze the implications of the low-bid requirements on capital construction projects.

Nationally, BV is used by the federal government, Massachusetts, California, Florida, Texas, Minnesota, and others, as well as universities and private companies.

Best Value procurement is selecting the provider that offers the best combination of performance, qualifications, and price. Construction procurement should be consistent, open, competitive, and free of political influence.

The task force considered a modification to the DBB process where the public owner would hire a designer with the project designed and released for bid. At that point there would a change in the selection process of selecting the general contractor with the intent of the general contractor selecting subcontractors similar to the current DBB process. The intent is lowering the risk of construction claims affording public owner efficiency in managing the project.

The task force recommends developing legislation allowing for a pilot program requiring a change to RCW 39.10 under the following criteria:

- Restricted to agencies that have completed at least one alternative public works project in the last five years.
- Projects would be approved by the PRC.
- The pilot program would include a maximum of 20 projects.
- No dollar/project size restrictions.

The task force recommended the following project criteria:

- The project involves construction with a high risk of cost or operational impacts or requires a contractor highly skilled with the installation of a specific system, and;
- Implementation of the project requires specialized high level contractors, and;
- The project has a high potential to benefit from the value added by specialized construction management.

The task force recommends the contractor selection criteria include:

- Contractor's Experience
- Contractor's Qualifications
- Contractor's Past Performance
- Contractor's Proposed Project Enhancements/Value Added

Contractor selection process:

- Owner will advertise and hold a public hearing toward the end of design to allow for comments on the contractor selection criteria and the selection process
- The selection process will be defined in the bid documents
- Owner will appoint a committee to evaluate the contractor's proposals

Agencies participating in the BV Pilot Program are required to submit project information to CPARB to evaluate the effectiveness of the process. The task force recommends with CPARB approval, preparing draft legislation for the 2011 legislative session that would sunset in 2013.

Mr. Johnson questioned the subjectivity of the value added requirement and what it would entail. The method is similar to GC/CM until the value added component is considered, which is where problems might be encountered. Mr. Lynch replied that the bid documents would describe how it would be measured objectively. Mr. Johnson questioned the difference between GC/CM and BV and why the Board would want to pursue BV when adjustments are still occurring to the GC/CM delivery method. Mr. Lynch responded that except for the selection process, the delivery methods are very different as the contractor is not on board at the beginning of design and there is no requirement to publicly bid the subcontracts. It's intended to be an in-between project that is complex but not to the extent of requiring GC/CM delivery. It would be a satisfactory project for DBB but there would be more criteria and a process of selecting the right contractor for the project.

Mr. Ahlers said he's familiar with BV through the federal government, which has been in place for a number of years. The main criticism involves the enhancements and some actions some contractors will take to include enhancements other bidders might not realize are of importance to the owner. The past performance rating is another factor that appears to be subjective. The federal government has a system for performance system methods. However, there is no standard system for rating a contractor's performance within the state. It could involve a number of factors ranging from safety, participation in social/economic programs, number of change orders, or number of claims, etc.

Mr. Lynch said currently, the performance factor is through responsibility checks. Change orders and claim history haven't been considered. The size and nature of previous projects are also considered. When GA conducts responsibility checks the department contacts owners of previous projects for feedback in different categories leading to a score for previous projects. Past performance is almost always subjective to some degree. GA selects architects based on qualifications.

Mr. Ahlers said his concern is based on experience of a contractor submitting the best price but not selected because of some other subjective criteria. One example is the contractor who had the best proposal but the price was slightly higher and suddenly the criteria focused on cost. He questioned how administrators decide what's in the best interest of the taxpayer when they make those decisions. Often, it's difficult to determine what the government really wants. As a taxpayer, he wants the best value.

Mr. Lynch referred to the GC/CM selection process involving a scoring system for all non-price criteria and the bid. Those two combined determine the outcome. A low bid can overcome lower points in the qualification scoring. He said he believes the process has been fair. Mr. Ahlers said his experience in BV is with the federal government where most of the projects are not DB projects where there is a design competition. This method is essentially bidding documents and the ability to enhance design is not a factor. All emphasis is placed on contract management. The enhancement element is the subjective element of concern. He cited a national firm that was experienced in submitting successful bid documents but really had no regional experience but was successful because of the ability to improve on the enhancement criteria. He

noted that he is a member of the task force but was unable to participate recently. By not including design it takes a critical factor for evaluating Best Value off the table.

Mr. Strong said task force members discussed the issue. The process includes objectivity and predictability through the selection process by including a public hearing, a defined selection process, and identification of the evaluators as well as discussions on aspects of the project that might be of best value. Criteria are defined upfront.

Cynthia Cooper said her concerns pertain to the selection of subcontractors, which appears not to include a bid process. Mr. Lynch said it's similar to DBB where the contractor selects subcontractors.

Mr. Johnson commented that some of the states with BV experience are not necessarily good examples for completion of public projects. The proposal needs additional work. There's too much subjectivity, which is evident in federal contracts. Also lacking is benefits that a project may provide to the community through best value by adding jobs and apprenticeships. Those issues are important in terms of best value by what the project brings to the community.

Mr. Rowe added that it's important to consider another alternative method that is somewhere in between and makes sense. The criteria might be too limiting and it might be better to limit the restrictions. He supports a transparent process and to avoid subjectivity and the perception of making decisions in a whimsical fashion. Public owners want a transparent process that provides best value. There is an opportunity to pursue a pilot project to gauge the effectiveness of the method.

Ms. Yang acknowledged some of concerns surrounding unfairness and shenanigans involved in prior processes. However, the intent is to build on transparency and objectivity on a pilot basis by tailoring it to be as progressive and transparent as possible and to provide information on whether the method can be successful. It is a tool that is available on a two-year basis.

Mike Purdy asked for clarification regarding the non inclusion of price as selection criteria. Mr. Lynch said the task force agreed not to limit the size of projects within the pilot because the goal is to encourage some smaller and medium-sized projects. Price is a major factor in the selection criteria and was inadvertently left of the presentation material.

Mr. Johnson advocated against including mega projects.

Discussion followed on the steps for developing draft language. Mr. Lynch offered to work with staff to draft legislation. Mr. Johnson suggested instead of drafting legislative language at this point, developing a position paper on Washington's Best Value contracting method and highlight the differences and why the method would be successful in the state. He acknowledged he's not convinced BV should be pursued and suggested flushing out the details so the Board knows what's entailed. Legislation for BV in 2011 is moving too fast.

John Lynch moved, seconded by Gary Rowe, to direct the BV Task Force to draft legislation language of the Best Value alternative contracting method for consideration by the Board at its September meeting.

Several members expressed support of the motion while not necessarily supportive of future legislation to enable the task force to provide more details on the method.

Motion carried. Motion was opposed by Dave Johnson, Cynthia Cooper, and Mike Riker.

Mr. Rowe referred to the HB 2805, which requires some changes in process for out-of-state procurement and reporting requirements for projects over \$1million. The legislation requires GA to provide guidelines. He inquired about the timing of the guidelines. Mr. Lynch said GA is nearly completed and can provide a link on CPARB's website. Mr. Rowe said there are also requirements for public owners to determine whether a contractor is eligible based on whether the reports are filed. He asked if that information will be available. Mr. Lynch explained that once it's been determined a contractor hasn't provided the information as required; the contractor will be added to a list by the Department of Labor and Industries. The owner can check with L&I to see if the contractor is listed. Ms. Deakins said the requirement is for contracts effective September 1, 2010. Mr. Rowe commented that for any contract, regardless of the cost, there is a requirement to inquire whether the contractor has been determined to be eligible or ineligible based on whether they are reporting. That puts a burden on local contractors. It's important to know how the industry will be aware of the requirements so that they are not challenged on contracts because of the requirement. Mr. Lynch said the legislation requires the public owner to check on the prime bidder. Subcontractors are another issue. GA is including language within the department's contracts that subcontractor on L&I's list would be considered for disqualification if there is a reasonable objection. Mr. Rowe asked for assurance that the information is available to counties, cities and other public owners.

Responsibility/Eligibility

Mr. Ahlers reported the issue concerns contracts for selection and responsibility/eligibility criteria recently enacted by the Legislature, which is regrettably being used by some owners to select contractors and restrict some competition in some projects. The examples are extreme and there is no suggestion that all owners are doing this. The issue has created tension in the contractor community which led to the formation of the task force.

The first meeting on March 24 entailed reviewing contractor comments from public owners and establishing a work program. The next meeting is on May 20, which will include a review of specific examples of contractor responsibility as described by some of the stakeholders as being onerous as well as explore some solutions for the eligibility/responsibility issue including educational solutions, discussions with stakeholders, and possible legislation if recommended by the task force.

2010 Work Plan

Chair Maruska suggested scheduling the September meeting longer to allow sufficient time to begin a review of reauthorization of RCW 39.10.

Additionally, Dick Lutz requested a discussion on the JOC Task Force and data.

Mr. Lutz reported a subcommittee discussed the survey for Job Order Contracting. There were some categories that were misunderstood, which needs clarification. Another meeting is necessary to clarify the information to accurately assess the success or failure of Job Order Contracting. Additionally, some other agencies want to participate in JOC that are not included on the list that would require a change in legislation as well.

CPARB 2010 Legislative Update

Chair Maruska referred members to information on the outcome of the 2010 legislation.

John Ahlers, Gary Rowe, and Chris Hirst left the meeting at 12:05 p.m.

Budget Update

Chair Maruska reported some recent legislation for boards and commissions will impact CPARB and PRC.

Ms. Deakins referred to updated information on the budget. For fiscal year 2010, the budget is \$123,000. In HB 2617, CPRAB was removed from the elimination list. The legislation eliminated reimbursement to members for travel expenses.

Ms. Deakins reviewed the 2010 budget and projected expenditures by expense category.

Discussion followed on the elimination of reimbursement of travel expenses. Chair Maruska questioned reimbursement for those members traveling from Spokane. The change is effective July 1. Mr. Lovell advised that all PRC members have voluntarily agreed to forego submitting for travel reimbursement.

Next Next Meeting Agenda

- Rescheduling November meeting date because of holiday
- Legislative and task force reports
- Review sunset legislation

Ms. Deakins advised that legislation for elimination of boards and commissions includes language for encouraging different methods to reduce traveling, such as video conferencing. She asked for feedback on that option. Members recommended against video conferencing.

Adjournment

Dave Johnson moved, seconded by Ed Kommers, to adjourn the meeting at 12:15 p.m. Motion carried.

Robert Maruska, CPARB Chair

Prepared by Valerie L. Gow, Recording Secretary/President
Puget Sound Meeting Services